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HARMONI INTERNATIONAL SPICE, INC. AND
ZHENGZHOU HARMONI SPICE CO., LTD.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

HARMONI INTERNATIONAL SPICE,
INC., a California corporation, and
ZHENGZHOU HARMONI SPICE CO.,
LTD., a corporation,

Plaintiffs.

V.

WENXUAN BAI, an individual, et al.,

Defendants

Case No. 2:16-cv-00614-BRO-ASx

Hon. Beverly Reid O'Connell

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS C AGRICULTURE
GROUP CORP., JIN XIA WEN, AND
MINGJU XU'S MOTION TO
STRIKE PLAINTIFFS' STATE LAW
CLAIMS PURSUANT TO CAL.
CODE OF CIVIL PROCEDURE §
425.16**

Hearing: April 18, 2016, 1:30 p.m.
Courtroom: 14

TABLE OF CONTENTS

	<u>Page</u>	
I.	INTRODUCTION AND RELEVANT PROCEDURAL BACKGROUND	1
II.	LEGAL STANDARD	4
III.	THE C AGRICULTURE DEFENDANTS CANNOT MEET THEIR BURDEN TO SHOW THAT THE EXTORTIONATE DEMAND LETTER IS PROTECTED CONDUCT UNDER THE ANTI-SLAPP STATUTE	5
	A. Defendants Have Not Met, and Cannot Meet, Their Burden to Show That the Demand Letter Was Sent in Anticipation of Litigation Contemplated in Good Faith	6
IV.	PLAINTIFFS HAVE ESTABLISHED A REASONABLE PROBABILITY OF PREVAILING ON THE MERITS OF THEIR STATE LAW CLAIMS	12
V.	CONCLUSION	15

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1
2 **TABLE OF AUTHORITIES**
3

4 **Page(s)**
5

6 **CASES**
7

8	<i>Adobe Sys. Inc. v. Coffee Cup Partners, Inc.</i> , 9 No. CV 11-02243 CW, 2012 WL 3877783 (N.D. Cal. 2012)	13
10	<i>All One God Faith, Inc. v. Organic & Sustainable Indus. Standards, Inc.</i> , 11 183 Cal. App. 4th 1186 (2010)	5
12	<i>Baharian-Mehr v. Smith</i> , 13 189 Cal. App. 4th 265 (2010)	15
14	<i>Bailey v. Brewer</i> , 15 197 Cal. App. 4th 781 (2011)	4, 6
16	<i>City of Cotati v. Cashman</i> , 17 29 Cal. 4th 69 (2002)	5
18	<i>Cohen v. Brown</i> , 19 173 Cal. App. 4th 302, 306-07 (2009).....	8, 10, 11
20	<i>Eisenberg v. Alameda Newspapers, Inc.</i> , 21 74 Cal. App. 4th 1359 (1999)	13
22	<i>Flatley v. Mauro</i> , 23 39 Cal. 4th 299 (2006)	passim
24	<i>Found. for Taxpayer & Consumer Rights v. Garamendi</i> , 25 132 Cal. App. 4th 1375 (2005)	15
26	<i>Freeman v. Schack</i> , 27 154 Cal. App. 4th 719 (2007)	4
28	<i>Fuhrman v. Cal. Satellite Sys.</i> , 29 179 Cal. App. 3d 408 (1986), <i>overruled on other grounds in Silberg v. Anderson</i> , 50 Cal.3d 205 (1990)	13
30	<i>Hilton v. Hallmark Cards</i> , 31 599 F.3d 894 (9th Cir. 2010)	12
32	<i>Manufactured Home Cmties., Inc. v. Cnty. San Diego</i> , 33 655 F.3d 1171 (9th Cir. 2011)	5

1	<i>Mendoza v. Hamzeh</i> ,	
2	215 Cal. App. 4th 799 (2013).....	8, 9, 12
3	<i>Mindys Cosmetics, Inc. v. Dakar</i> ,	
4	611 F.3d 590 (9th Cir. Cal. 2010).....	12
5	<i>Navellier v. Sletten</i> ,	
6	29 Cal. 4th 82 (2002).....	5
7	<i>Nguyen v. Proton Tech. Corp.</i> ,	
8	69 Cal. App. 4th 140 (1999)	13
9	<i>Malin v. Singer</i> ,	
10	217 Cal. App. 4th 1283 (2013)	11
11	<i>Roberts v. McAfee, Inc.</i> ,	
12	660 F.3d 1156 (9th Cir. 2011)	5, 12
13	<i>Schaffer v. City & County of San Francisco</i> ,	
14	168 Cal. App. 4th 992 (2008).....	4
15	<i>Soukup v. Law Offices of Herbert Hafif</i> ,	
16	39 Cal 4th 260 (2006)	5, 14
17	<i>Stenehjem v. Sareen</i> ,	
18	226 Cal. App. 4th 1405 (2014)	passim
19	<i>Visto Corp. v. Sproqit Techs., Inc.</i> ,	
20	360 F. Supp. 2d 1064 (N.D. Cal. 2005).....	13
21	STATUTES	
22	Cal. Civ. Proc. Code § 425.16	passim
23	Cal. Penal Code §§ 518-19	7, 10
24	OTHER AUTHORITIES	
25	Fed. R. Civ. P. 11	15

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1 **I. Introduction and Relevant Procedural Background**

2 In their Motion to Strike the Second through Sixth Claims of Plaintiffs' First
 3 Amended Complaint, Defendants C Agriculture Group Corp., Jin Xia Wen and
 4 Mingju Xu (collectively, the "C Agriculture Defendants") strive mightily to re-paint
 5 as a wholly benign precursor to legitimate litigation what is in reality an extortionate
 6 letter sent to Plaintiffs and their largest United States customer threatening to
 7 publicize blatantly false allegations of illegal conduct unless Plaintiffs paid over \$30
 8 million within five business days. Such an extortionate scheme, fueled by false and
 9 defamatory statements, is not the type of protected speech or petitioning behavior that
 10 qualifies for protection under California's Anti-SLAPP statute.

11 As the First Amended Complaint ("FAC") and Plaintiffs' Motion for a
 12 Preliminary Injunction allege in detail, the C Agriculture Defendants, part of the
 13 Chinese Garlic Association ("CGA"), have played and continue to play a central role
 14 in the CGA's illegal enterprise aimed at controlling the U.S. market for fresh Chinese
 15 garlic and extracting millions of dollars from Harmoni. *See* ECF No. 27 at 12-14;
 16 FAC ¶¶ 1, 49, 128. The extortionate behavior of Defendants that is the subject of the
 17 instant motion was part of that unlawful scheme.

18 More specifically, Plaintiffs allege that Defendants Wen and Xu, respectively
 19 the owner and manager of C Agriculture, working in combination with the owners of
 20 Chinese garlic exporting companies, have engaged in a years-long conspiracy to
 21 replace the garlic exports of Harmoni (which enjoys a lawfully obtained competitive
 22 advantage in the marketplace due to a lower dumping duty rate) with their own garlic
 23 by, among other things, (1) supporting the filing of false materials with the U.S.
 24 Department of Commerce ("DOC") in order to cause injury to Harmoni; (2) falsely
 25 implicating Plaintiffs in purported illegal activities; and (3) using false and defamatory
 26 assertions in an effort to extort money from Plaintiffs and damage their competitive
 27 position. FAC ¶¶ 107-89, 258; *see also id.* ¶¶ 13-14, 20, 38-39, 128-29.

1 In late 2015, as part of this ongoing conspiracy, C Agriculture, a reseller
 2 distributing garlic for various CGA members, sent a defamatory and extortionate letter
 3 to Plaintiffs and one of their largest U.S. customers, Christopher Ranch L.L.C.
 4 (“Christopher Ranch”), purportedly under the guise of threatening an antitrust action
 5 against Plaintiffs. FAC ¶¶ 31, 249-53; *see also id.* ¶¶ 128-30. By that letter, the C
 6 Agriculture Defendants defamed, and threatened to continue to defame, Plaintiffs,
 7 unless and until Plaintiffs agreed to pay C Agriculture an extortionate “settlement”
 8 ransom of \$32 million. *Id.* ¶¶ 31, 252, 256. The letter was sent just ten days before
 9 Defendants Montoya, Crawford, and Katz filed a petition with the DOC using false
 10 and fraudulent representations to request a new administrative review of Plaintiff
 11 Zhengzhou Harmoni, “with the intention of seeking millions of dollars from Plaintiffs
 12 in exchange for withdrawal of the request.” *Id.* ¶ 229; *see also id.* ¶¶ 249, 230-31.

13 Among other false assertions, C Agriculture claimed in the November 18, 2015
 14 letter that Christopher Ranch “received garlic imports from China processed with
 15 prison labor,” thereby falsely representing that such labor was used by Harmoni,
 16 Christopher Ranch’s Chinese garlic supplier. FAC ¶ 251. The letter carried with it
 17 the threat that such false assertions would be widely disseminated unless Harmoni
 18 agreed to an *immediate* extortionate payment of nearly \$32 million. *See* ECF No. 27-
 19 5 (Decl. of George E. Mastoris, attaching a copy of the letter and all of its exhibits as
 20 Ex. 17). The letter falsely stated, with a copy to Plaintiffs’ largest U.S. customer, that
 21 Plaintiffs engaged in criminal activity and processed garlic “in unsanitary
 22 conditions.” *Id.* These assertions were fraudulent and false, as demonstrated by the
 23 evidence that Plaintiffs have submitted in support of their Motion for Preliminary
 24 Injunction to halt this conduct. *See* ECF No. 26-27. This evidence shows, among
 25 other things, that Zhengzhou Harmoni has a strict policy against the use of prison
 26 labor in its production of Chinese garlic, and that Plaintiffs have not used prison labor
 27 in the production of Chinese garlic at any time. *See* ECF No. 27-7 (Decl. of Rick
 28 Zhou) at ¶ 28. Rather than serving as a precursor to legitimate antitrust litigation

1 (which was never filed or otherwise pursued), the purpose of the defamatory letter was
2 to extort millions of dollars from Plaintiffs, damage Plaintiffs' customer relationships
3 and reputation in the industry, and further the unlawful scheme of using criminal
4 means to destroy Plaintiffs' business. FAC ¶¶ 31, 247-58; 128-30.

5 The FAC thus specifically alleges that "C Agriculture had no good faith
6 intention to actually file a lawsuit against Harmoni and/or Christopher Ranch," as
7 evidenced, *inter alia*, by the fact that it has not done so. FAC ¶ 257. Rather, "the
8 letter was made solely for the purpose of defaming Harmoni and damaging its
9 relationship with its customers, as well as for the purpose of extorting Harmoni, and
10 did not serve as a necessary or useful step in any litigation process." *Id.* Such
11 unlawful and extortionate behavior is not entitled to any statutory protection.

12 On March 4, 2016, Plaintiffs filed the FAC and concurrently moved for a
13 preliminary injunction against certain of the Defendants, including the C Agriculture
14 Defendants. *See* ECF Nos. 26-27. On March 18, 2016, the C Agriculture Defendants
15 filed a Motion to Dismiss Plaintiffs' First Amended Complaint and the instant Motion
16 to Strike the Second Through Sixth Claims of Plaintiffs' First Amended Complaint
17 Pursuant to California Code of Civil Procedure § 425.16 ("Anti-SLAPP
18 Motion"). *See* ECF Nos. 37-41. California's anti-SLAPP statute does not protect
19 false and defamatory communications that are not a legitimate precursor to litigation
20 and that are instead extortionate as a matter of law. Moreover, even if the C
21 Agriculture Defendants were able to satisfy their burden to show that their
22 extortionate demand letter somehow constituted protected conduct under the anti-
23 SLAPP statute, Plaintiffs have demonstrated here, as well as in their Motion for
24 Preliminary Injunction and Opposition to the C Agriculture Defendants' Motion to
25 Dismiss, a reasonable probability of prevailing on the merits of their tort claims
26 against Defendants' false and defamatory statements. Therefore, the Anti-SLAPP
27 provisions do not prevent these claims from proceeding. For these reasons, discussed
28

1 in greater detail below, the C Agriculture Defendants' motion to strike must be
 2 denied.

3 **II. Legal Standard**

4 The purpose of California's anti-SLAPP statute is to protect the right to
 5 participate, through free speech or petitioning, in matters of public significance.
 6 *Schaffer v. City & County of San Francisco*, 168 Cal. App. 4th 992, 997-98 (2008);
 7 Cal. Civ. Proc. Code § 425.16(a). Specifically, the statute provides that “[a] cause of
 8 action against a person arising from any act of that person in furtherance of the
 9 person's right of petition or free speech under the United States Constitution or the
 10 California Constitution in connection with a public issue shall be subject to a special
 11 motion to strike, unless the court determines that the plaintiff has established that there
 12 is a probability that the plaintiff will prevail on the claim.” Cal. Civ. Proc. Code §
 13 425.16(b)(1). While statements made in ongoing judicial proceedings fall within the
 14 scope of the anti-SLAPP statute, *pre-litigation* statements are not protected unless
 15 they “relate[] to litigation that is contemplated in good faith and under serious
 16 consideration.” *Bailey v. Brewer*, 197 Cal. App. 4th 781, 792 (2011); Cal. Civ. Proc.
 17 Code § 425.16(e). That is decidedly not the case here with respect to C Agriculture's
 18 November 18, 2015 letter.

19 As courts have explained, “[t]he anti-SLAPP law involves a two-step process
 20 for determining whether a claim is subject to being stricken. In the first step, the
 21 moving defendant is required to make a *prima facie* showing . . . the defendant's
 22 challenged acts were taken in furtherance of constitutional rights of petition or free
 23 speech in connection with a public issue, as defined by the statute.” *Wang v. Wal-*
Mart Real Estate Bus. Trust, 153 Cal. App. 4th 790, 800 (2007). Stated another way,
 25 the defendant must show that the causes of action targeted by an anti-SLAPP motion
 26 “arise[] from” protected activity. Cal. Civ. Proc. Code § 425.16(b)(1). The burden
 27 then shifts to the plaintiff to demonstrate a reasonable probability of prevailing on the
 28 merits of its claims. *Freeman v. Schack*, 154 Cal. App. 4th 719, 726 (2007).

1 In deciding an anti-SLAPP motion, courts are to consider “the pleadings[] and
 2 supporting and opposing affidavits,” Cal. Civ. Proc. Code § 425.16(b)(2), but “not [to]
 3 weigh the credibility or comparative probative strength of competing evidence.”
 4 *Manufactured Home Cmties., Inc. v. Cnty. San Diego*, 655 F.3d 1171, 1176-77 (9th
 5 Cir. 2011) (emphasis in original). Rather, courts are to “accept as true the evidence
 6 favorable to the plaintiff and evaluate the defendant’s evidence only to determine if it
 7 has defeated that submitted by the plaintiff as a matter of law.” *Soukup v. Law Offices*
 8 *of Herbert Hafif*, 39 Cal 4th 260, 269 n.3 (2006). “Only a cause of action that satisfies
 9 both prongs of the anti-SLAPP statute—*i.e.*, that arises from protected speech or
 10 petitioning *and* lacks even minimal merit—is a SLAPP, subject to being stricken
 11 under the statute.” *Stenehjem v. Sareen*, 226 Cal. App. 4th 1405, 1413 (2014)
 12 (quoting *Navellier v. Sletten*, 29 Cal. 4th 82, 89 (2002)) (emphasis in original). As
 13 courts have recognized, the burden on Plaintiffs to demonstrate a claim of “minimal
 14 merit” to defeat an Anti-SLAPP Motion such as this one is a “low bar.” *Roberts v.*
 15 *McAfee, Inc.*, 660 F.3d 1156, 1163 (9th Cir. 2011).

16 **III. The C Agriculture Defendants Cannot Meet Their Burden to Show that the** 17 **Extortionate Demand Letter Is Protected Conduct Under the Anti-SLAPP** **Statute**

18 Under the first prong of the anti-SLAPP analysis, the C Agriculture Defendants
 19 must make a *prima facie* showing that the claims at issue are ones “arising from”
 20 protected activity – namely, an act “[1] in furtherance of the person’s right of petition
 21 or free speech under the United States Constitution or California Constitution [and]
 22 [2] in connection with a public issue.” Cal. Civ. Proc. Code § 425.16(b)(1). This
 23 determination focuses on Defendants’ “activity that gives rise to his or her asserted
 24 liability – and whether that activity constitutes protected speech or petitioning.” *All*
 25 *One God Faith, Inc. v. Organic & Sustainable Indus. Standards, Inc.*, 183 Cal. App.
 26 4th 1186, 1200 (2010) (emphasis in original); *City of Cotati v. Cashman*, 29 Cal. 4th
 27 69, 78 (2002) (“cause of action itself” must be “based on an act in furtherance of the
 28

1 defendant's right of ... free speech") (emphasis in original). The C Agriculture
 2 Defendants fail to carry this burden here.

3 **A. Defendants Have Not Met, and Cannot Meet, Their Burden to Show
 4 That the Demand Letter Was Sent in Anticipation of Litigation
 Contemplated in Good Faith**

5 To be sure, some pre-litigation communications "that are preparatory to or in
 6 anticipation of litigation" may fall within the scope of the anti-SLAPP statute.

7 *Stenehjem*, 226 Cal. App. 4th at 1413. "It is well settled," however, "that a party
 8 seeking to invoke the protections of section 425.16 for prelitigation statements must
 9 demonstrate that the statements 'relate[] to litigation that is contemplated in good
 10 faith and under serious consideration.'" *Bailey*, 197 Cal. App. 4th at 792 (internal
 11 citation omitted). In determining whether a statement meets this test for purposes of
 12 the anti-SLAPP statute, courts will look to case law interpreting California's litigation
 13 privilege. *Id.* at 790. For the reasons set forth in Section IV, *infra*, the letter sent by C
 14 Agriculture is not protected by the litigation privilege, nor the anti-SLAPP statute.

15 Plaintiffs' unrebutted evidence¹ demonstrates that the demand letter was sent as
 16 part of an overall extortionate scheme to harm Plaintiffs, and not in connection with
 17 legitimate antitrust litigation that was "contemplated in good faith and under serious
 18 consideration." *Id.* at 792. The C Agriculture Defendants have submitted no
 19 probative evidence to the contrary. Indeed, no antitrust litigation has been filed or
 20 pursued since the extortionate threat was made over five months ago. And the false
 21 and defamatory assertions about Plaintiffs' purported use of prison labor in unsanitary
 22 conditions would have nothing to do with any antitrust litigation – thus destroying any
 23 claim that these extortionate assertions were a legitimate precursor to any such
 24 litigation.

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¹ See ECF Nos. 26-27.

1 **B. The Conduct Alleged by Plaintiffs Is Also Not Protected Activity
2 Under the Anti-SLAPP Statute Because the Letter Constitutes
3 Extortion as a Matter of Law**

4 The California Supreme Court has held that extortionate demands are not
5 protected by the anti-SLAPP statute. *Flatley v. Mauro*, 39 Cal. 4th 299, 305 (2006)
6 (“section 425.16 cannot be invoked by a defendant whose assertedly protected activity
7 is illegal as a matter of law”). In *Flatley*, a demand letter sent by an attorney accused
8 the entertainer Michael Flatley of sexually assaulting his client and demanded that
9 Flatley pay the attorney a settlement or face the prospect that his personal tax and
10 financial information would be made public and available to the media. *Id.* The court
11 held that the attorney’s conduct constituted extortion under California law because the
12 communication at issue accused Flatley of crimes and threatened to disgrace him
13 unless Flatley paid the attorney \$1 million. *Id.*; *see also* Cal. Penal Code §§ 518-19
14 (extortion is defined as “the obtaining of property from another, with his consent ..
15 induced by a wrongful use of force or fear,” and such fear “may be induced by a threat
16 ... to accuse the individual ... of any crime or [t]o expose, or impute to him ...a
17 deformity, disgrace or crime.”).² Because the conduct targeted by the plaintiff’s
18 complaint was illegal as a matter of law, the Supreme Court affirmed the denial of the
19 defendant’s motion to strike. *Flatley*, 39 Cal. 4th at 305.

20 Over the past ten years, California appellate courts have consistently denied
21 anti-SLAPP motions in cases involving illegal behavior with far less egregious facts
22 than those presented in *Flatley*. *See Stenehjem*, 226 Cal. App. 4th at 1419 (noting that
23 “[a]t least five published cases have followed *Flatley* in concluding that the underlying
24 conduct was illegal as a matter of law and, therefore, the defendant could not strike
25 the complaint under the anti-SLAPP law.”). In *Stenehjem*, the California Court of

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² The *Flatley* court also noted that “Extortion ... criminalizes the making of threats
27 that, in and of themselves, may not be illegal. In many blackmail cases the threat is to
28 do something in itself perfectly legal, but that threat nevertheless becomes illegal
 when coupled with a demand for money.” *Id.* at 326. Furthermore, “threats to do the
 acts that constitute extortion ... are extortionate whether or not the victim committed
 the crime or indiscretion upon which the threat is based and whether or not the person
 making the threat could have reported the victim to the authorities or arrested the
 victim.” *Id.* at 327.

1 Appeals held that a pre-litigation demand constituted extortion as a matter of law
 2 under *Flatley* because “[i]t threatened to expose [the defendant] to federal authorities
 3 for alleged violations of the False Claims Act unless he negotiated a settlement of
 4 Stenehjem’s private claims.” *Id.* at 1423. The court noted that “it is of no
 5 consequence that the e-mail did not specifically identify the crime of which Stenehjem
 6 intended to accuse [the defendant]” and held that, even if a communication “may not
 7 involve a threat as extreme as the one in *Flatley*, it is nonetheless extortion as a matter
 8 of law.” *Id.* at 1423, 1427 (“No precise or particular form of words is necessary in
 9 order to constitute a threat under the circumstances. Threats can be made by innuendo
 10 and the circumstances under which the threat is uttered and the relations between [the
 11 parties] may be taken into consideration …”) (citation omitted). Accordingly, the
 12 court reversed the trial court’s order granting the defendant’s anti-SLAPP motion. *Id.*

13 In *Cohen v. Brown*, the defendant attorney had requested the assistance of the
 14 plaintiff, another attorney, in representing a client in a personal injury matter. 173
 15 Cal. App. 4th 302, 306-07 (2009). After a dispute arose between the two attorneys,
 16 the defendant made a written demand to the plaintiff threatening to file a complaint
 17 with the State Bar if the plaintiff refused to sign off on the client’s settlement check to
 18 allow all fees to be paid to the defendant. *Id.* at 318, n.9 (the defendant’s email stated
 19 that the State Bar would institute disciplinary proceedings unless “you respond to this
 20 e-mail that you will immediately endorse the settlement checks without condition.”).
 21 The appellate court held that the plaintiff’s claims for fraud, breach of contract, unfair
 22 competition, and other claims were not subject to the anti-SLAPP statute because
 23 Brown’s conduct constituted extortion as a matter of law. *Id.* at 317-18.

24 And in *Mendoza v. Hamzeh*, the defendant sent a demand letter to the plaintiff
 25 on behalf of the plaintiff’s former employer stating that they were “in the process of
 26 uncovering the substantial fraud, conversion and breaches of contract that [the
 27 plaintiff] has committed on my client” and that if the plaintiff did not “agree to
 28 cooperate with our investigation and provide us with a repayment of such damages

1 caused, we will be forced to proceed with filing a legal action ..., as well as reporting
 2 [you] to the California Attorney General, the Los Angeles District Attorney, [and] the
 3 Internal Revenue Service regarding tax fraud” [215 Cal. App. 4th 799, 802 \(2013\)](#).
 4 The *Mendoza* court held that the trial court had not erred in denying the defendant’s
 5 anti-SLAPP motion because under *Flatley*, the demand letter constituted extortion as a
 6 matter of law in that it involved a “threat to report criminal conduct to enforcement
 7 agencies and to Mendoza’s customers and vendors, *coupled with a demand for*
 8 *money.*” *Id.* at 806 (emphasis in original).

9 The same result is required here, where Defendant C Agriculture engaged an
 10 attorney to send an extortionate letter to Plaintiff Harmoni threatening “to publicly
 11 accuse Harmoni of a crime it did not commit unless Harmoni pays it \$32 million.”
 12 FAC ¶ 256; *see also id.* ¶¶ 247-58; ECF No. 27-5. In the letter at issue, C Agriculture
 13 also falsely claims that “Harmoni and [its largest customer] Christopher Ranch acted
 14 together” to eliminate competition in the U.S. market for peeled garlic by selling at
 15 below-market prices. C Agriculture’s attorney goes on to claim that “[o]ur clients are
 16 in possession of photographic evidence ... and video showing that garlic was
 17 delivered to Zhengzhou Xiwannian’s supplier in February 2015 after being peeled by
 18 inmates of a Chinese prison in unsanitary conditions.” *See* ECF No. 27-5. The letter
 19 attaches 17 pages of photographs that it claims “show that Christopher Ranch received
 20 garlic imports from China processed with prison labor.” *Id.*³ The letter goes on to
 21 assert that C Agriculture has suffered lost profits as a result of the allegedly
 22 anticompetitive conduct in the amount of over \$11 million to date, “estimates that the
 23 ongoing effects of the anticompetitive actions by Harmoni and Christopher Ranch will
 24 cause it to lose an additional \$19,818,682.59 through 2022, for a total of
 25 \$31,723,645.85,” and demands payment of this amount “by certified check, in
 26 immediately available funds, made payable to [C Agriculture’s attorney] “by no later

27 ³ Defendants repeatedly attach and reference the letter *without* these exhibits. The
 28 letter, with all of the exhibits, was attached to Plaintiffs’ Motion for Preliminary
 Injunction, as Exhibit 17 to the Decl. of George E. Mastoris in support of that motion.
See ECF No. 27-5.

1 than 5 p.m. (NY time) on November 25, 2015”—a mere *seven days after the date on*
 2 *the letter*. See ECF No. 27-5.

3 The letter constitutes extortion as a matter of law because it contains a threat to
 4 publicly accuse Plaintiffs of a crime coupled with an immediate demand for payment.
 5 Cal. Penal Code §§ 518-19; *Flatley*, 39 Cal. 4th at 305. The C Agriculture
 6 Defendants’ argument that the letter does not expressly “threaten[] to report
 7 [Plaintiffs] to prosecuting authorities” is irrelevant. The case law is clear that a letter
 8 need not explicitly threaten to accuse Plaintiffs of a specific crime or threaten to report
 9 Plaintiffs to the authorities in order to constitute extortion. *Flatley*, 39 Cal. 4th at 326-
 10 27; *Cohen*, 173 Cal. App. 4th at 310-11 (extortionate communication threatened only
 11 to report the plaintiff to the State Bar); *see also Stenehjem*, 226 Cal. App. 4th at 1424
 12 (“The more vague and general the terms of the accusation the better it would subserve
 13 the purpose of the accuser in magnifying the fears of his victim, and the better also it
 14 would serve to protect him in the event of the failure to accomplish his extortion and
 15 of prosecution for his attempted crime.”) (citations omitted). The C Agriculture
 16 Defendants’ threats to make criminal allegations part of the public record is sufficient
 17 to constitute extortion. Cal. Penal Code §§ 518-19.

18 Furthermore, the letter must be read within the context of the parties’
 19 interactions. *See Stenehjem*, 226 Cal. App. 4th at 1421-22. As set forth in the FAC,
 20 and established in Plaintiffs’ Motion for Preliminary Injunction, C Agriculture’s
 21 demand letter is merely one part of an unlawful conspiracy and criminal enterprise
 22 undertaken by all of the defendants to destroy Plaintiffs’ share of the U.S. market for
 23 peeled garlic. ECF Nos. 26-27. The fact that this letter was sent just 10 days before
 24 Defendants Montoya, Crawford, and Katz (*i.e.*, other members of the CGA) submitted
 25 false information to the DOC to seek a review of Plaintiff Zhengzhou Harmoni is not
 26 a coincidence. It was part and parcel of an overall scheme to extort money from
 27 Plaintiffs and destroy their Chinese garlic business, and was thus anything but a
 28 legitimate precursor to litigation. *Id.*; ECF No. 27-5; FAC ¶¶ 249, 229-31.

1 Defendants' reliance on *Malin v. Singer* is misplaced. *See* Mot. at 6-9; 217 Cal.
 2 App. 4th 1283 (2013). In that case, the defendant threatened to file a lawsuit against
 3 the plaintiff (attaching the complaint to its letter) that would expose plaintiff's sexual
 4 misdeeds if the case was not resolved. *Id.* at 1288-90. The court held that the pre-
 5 litigation demand letter was protected under anti-SLAPP (contrasting it with the facts
 6 in *Flatley* and its progeny) because the letter did not threaten to disclose the plaintiff's
 7 alleged wrongdoing to the public and because "the threatened disclosure of a secret
 8 affecting a third party, who is neither a relative nor a family member, does not
 9 constitute extortion." *Id.* at 1298-99.

10 Here, the demand letter *explicitly* threatens to file a lawsuit that will be part of
 11 the public record and indicates that it will attach purported video and photographic
 12 evidence of Plaintiffs' purported criminal use of prison labor in "unsanitary
 13 conditions." Plaintiffs, not a "third party," are clearly the ones who would be harmed
 14 by this threatened conduct and extortion. *See* ECF No. 27-7 (Decl. of Rick Zhou) at
 15 ¶¶ 27-31 (false statements in the letter "have already harmed Harmoni's business
 16 relationships with Christopher Ranch" that "will take years to repair, if it can be
 17 repaired at all," and "some of Harmoni's customers who are aware of these allegations
 18 have expressed skepticism regarding Harmoni's practices and have switched their
 19 business to other importers, resulting in significant lost sales.").⁴

20 The C Agriculture Defendants' letter is thus closely analogous to the letters
 21 found to be extortionate as a matter of law in *Flatley*, *Stenehjem*, *Cohen*, and
 22

23 ⁴ The C Agriculture Defendants' argument that "the alleged misconduct" must be
 24 "unrelated to the subject matter of the defendant's underlying damage or injury claim"
 25 in order to constitute extortion is likewise off base. *See* Mot. at 8. While the fact that
 26 "the 'secret' that would allegedly expose [the plaintiff] and others to disgrace was
 27 inextricably tied to [the defendant's] pending complaint" in *Malin*, this was only one
 28 factor the court considered in holding that the conduct fell within the scope of the anti-
 SLAPP statute. *Malin*, 217 Cal. App. 4th at 1299. Other courts have thus found that a
 threat to make public an allegation in a lawsuit *does* constitute extortion. *See, e.g.*,
Cohen, 173 Cal. App. 4th at 306-07. In any event, here, the C Agriculture Defendants
 made defamatory and extortionate claims in the demand letter about the use of prison
 labor in unsanitary conditions that have nothing to do with any alleged antitrust
 violations. ECF No. 27-5. Such defamatory allegations have no relationship to any
 antitrust claim about Plaintiffs' purportedly pricing Chinese garlic below cost.

1 *Mendoza*. The threat to make public false allegations that Plaintiffs have engaged in
 2 the criminal use of prison labor, coupled with a demand for “immediate payment” of a
 3 large sum of money, falls squarely within the definition of criminal extortion, and
 4 therefore is not protected by the anti-SLAPP statute. *See, e.g., Mendoza*, 215 Cal.
 5 App. 4th at 837 (“We do not read *Flatley* to mean the anti-SLAPP statute applies to
 6 some litigation communications which satisfy the criteria for criminal extortion if
 7 such communications are not particularly extreme or egregious. The rule must be a
 8 bright line rule. The anti-SLAPP statute does not apply to litigation communications
 9 which constitute criminal extortion as a matter of law.”).

10 **IV. Plaintiffs Have Established a Reasonable Probability of Prevailing on the**
 11 **Merits of Their State Law Claims**

12 Because the C Agriculture Defendants have failed to (and cannot) carry their
 13 burden of demonstrating that the challenged conduct falls within the anti-SLAPP
 14 statute, their motion should be denied and the Court need not even reach the second
 15 prong of the anti-SLAPP analysis. *See Stenehjem*, 226 Cal. App. 4th at 1420. Even if
 16 the C Agriculture Defendants could satisfy their initial burden, however, in order to
 17 defeat the instant Motion, Plaintiffs would need only demonstrate a “minimum level
 18 of legal sufficiency and triability,” in other words, “minimal merit” by “stat[ing] and
 19 substantiat[ing] a legally sufficient claim.” *Mindys Cosmetics, Inc. v. Dakar*, 611 F.3d
 20 590, 598-99 (9th Cir. Cal. 2010). This is a “low bar.” *Roberts*, 660 F.3d at 1163;
 21 *Hilton v. Hallmark Cards*, 599 F.3d 894, 908 (9th Cir. 2010) (“required probability
 22 that [a party] will prevail need not be high.”).

23 The C Agriculture Defendants claim that Plaintiffs cannot establish a
 24 reasonable probability of prevailing on their state law claims because C Agriculture’s
 25 “demand letter is protected by California’s litigation privilege.” Mot. at 10-13. But,
 26 as set forth in further detail in Plaintiffs’ Opposition to the C Agriculture Defendants’
 27 Motion to Dismiss, the litigation privilege does not even apply “when the person
 28 publishing an injurious falsehood is not seriously considering litigation. In such a
 case, the publication has no ‘connection or logical relation’ to an action and is not

1 made ‘to achieve the objects’ of any litigation.’’ *Fuhrman v. Cal. Satellite Sys.*, 179
 2 Cal. App. 3d 408, 422 n.5 (1986) (internal citation omitted), *overruled on other*
 3 grounds in *Silberg v. Anderson*, 50 Cal.3d 205, 212 (1990); see *id.* (“No public policy
 4 supports extending a privilege to persons who attempt to profit from hollow threats of
 5 litigation.”). In other words, the litigation privilege “does not prop the barn door wide
 6 open for any and every sort of prelitigation charge or innuendo.” *Nguyen v. Proton*
 7 *Tech. Corp.*, 69 Cal. App. 4th 140, 150 (1999); see also *Visto Corp. v. Sproqit Techs.,*
 8 *Inc.*, 360 F. Supp. 2d 1064, 1069 (N.D. Cal. 2005); *Eisenberg v. Alameda*
 9 *Newspapers, Inc.*, 74 Cal. App. 4th 1359, 1379-80 (1999) (“[B]ecause the privilege
 10 does not attach prior to the actual filing of a lawsuit unless and until litigation is
 11 seriously proposed *in good faith* for the purpose of resolving the dispute, even a threat
 12 to commence litigation will be insufficient to trigger application of the privilege if it is
 13 actually made as a means of inducing settlement of a claim and not in good faith
 14 contemplation of a lawsuit. ***This is a question of fact that must be determined before***
 15 ***the privilege is applied.***”) (emphases added).

16 The C Agriculture Defendants’ argument that pre-litigation letters sent without
 17 a good faith belief *in the truth of the allegations therein* are protected by the litigation
 18 privilege thus misses the point entirely. See Mot. at 12-13. Where a defendant does
 19 not seriously intend to file the threatened lawsuit, the litigation privilege does not
 20 attach at all. None of the cases cited by the C Agriculture Defendants is to the
 21 contrary. *Id.*; see *Adobe Sys. Inc. v. Coffee Cup Partners, Inc.*, No. CV 11-02243 CW,
 22 2012 WL 3877783, at *12 (N.D. Cal. 2012) (where the plaintiff sent letters to the
 23 defendant threatening to file a lawsuit for patent infringement, and then *did* file the
 24 lawsuit, the court concluded that the plaintiff was contemplating litigation seriously
 25 and in good faith); *Visto*, 360 F. Supp. 2d at 1069 (finding that the plaintiff had
 26 alleged sufficient facts in the complaint that the defendant lacked a good faith
 27 intention to file a lawsuit and therefore that the plaintiff’s claims were not barred by
 28 the litigation privilege).

1 Plaintiffs have alleged that the C Agriculture Defendants sent the letter at issue
 2 “in an effort to defame and extort” Plaintiff Harmoni, and that they “had no good faith
 3 intention to actually file a lawsuit against Harmoni and/or Christopher Ranch, and, in
 4 fact, did not. The letter was made solely for the purpose of defaming Harmoni and
 5 damaging its relationship with its customers, as well as for the purpose of extorting
 6 Harmoni, and did not serve as a necessary or useful step in any litigation process.”
 7 FAC ¶¶ 254, 257. Indeed, no threatened antitrust lawsuit was ever filed by C
 8 Agriculture against Plaintiffs. Rather, as Plaintiffs allege, the extortive letter was part
 9 of a broader conspiracy, in concert with the other defendants named in this case, to
 10 extort money and destroy Plaintiffs’ competitive position in the U.S. garlic market.
 11 *See supra*, Section I.⁵

12 The Court must take these allegations as true for purposes of deciding this
 13 Motion, particularly as the C Agriculture Defendants have come forward with ***no***
 14 ***evidence*** to rebut them and instead rely solely upon the letter itself. Accepting
 15 Plaintiffs’ allegations as true regarding the motivations and intent of the C Agriculture
 16 Defendants, and particularly factoring in that the C Agriculture Defendants never did
 17 file any antitrust lawsuit against Plaintiffs, the Court must hold for purposes of this
 18 Motion that the litigation privilege does not apply. *Soukup*, 39 Cal. 4th at 269, n.3.
 19 This is particularly true because the defamatory statements made – involving the use
 20 of prison labor – would have nothing to do with the threatened antitrust action and
 21 thus cannot possibly be covered under the pretense of any litigation privilege. *See*
 22 *Stenehjem*, 226 Cal. App. 4th at 1419.

23 Given that the C Agriculture Defendants do not (and cannot) otherwise contend
 24 that Plaintiffs have failed to allege facts sufficient to meet their “low bar” to show a

25 ⁵ Given the extensive allegations in the FAC of the C Agriculture Defendants’
 26 connection to the other defendants and participation in the overall conspiracy
 27 summarized herein, their narrow reading of the FAC must be ignored. *See* Mot. at 9
 28 n.7 (claiming that Plaintiffs have not alleged factual support for their claim that the C
 Agriculture Defendants sent the letter for the purpose of defaming and extorting
 Plaintiffs). All of Plaintiffs’ well-pled allegations in the FAC must be accepted as true
 for purposes of this Motion. *Soukup*, 39 Cal. 4th at 291.

1 reasonable probability of prevailing on their state law claims, Mot. at 10-13, the
 2 Court—were it found necessary to reach the second prong of the anti-SLAPP analysis
 3 (and it is not)—must conclude this Motion should be denied.

4 **V. Conclusion**

5 As demonstrated above, the challenged conduct on the part of the C Agriculture
 6 Defendants does not fall within the scope of the anti-SLAPP statute. And even if it
 7 did, Plaintiffs' allegations—supported by *unrebutted* affidavits and evidence
 8 submitted in connection with Plaintiffs' preliminary injunction motion—demonstrate
 9 that Plaintiffs have a reasonable probability of prevailing on the merits of their state
 10 law claims against the conduct at issue.

11 The anti-SLAPP statute *requires* the Court to award costs and reasonable
 12 attorney fees to a prevailing plaintiff if the Court finds that the motion to strike is
 13 “frivolous or is solely intended to cause unnecessary delay.” Cal. Civ. Proc. Code §
 14 425.16(c)(1); *Found. for Taxpayer & Consumer Rights v. Garamendi*, 132 Cal. App.
 15 4th 1375, 1388 (2005) (quoting statute); *see also* Fed. R. Civ. P. 11. Such is the case
 16 here, where the applicable case law, coupled with Plaintiffs' evidentiary showing, is
 17 both dispositive of the instant motion and demonstrates that the C Agriculture
 18 Defendants' Motion was frivolous. *See, e.g., Baharian-Mehr v. Smith*, 189 Cal. App.
 19 4th 265, 275 (2010).

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